

Farmers who sell products to purchasers for use or consumption from roadside stands or who rent or lease space from an established market and sell commodities in their own names to purchasers for use or consumption are engaged in the business of selling tangible personal property at retail and are therefore required to collect and remit Retailers' Occupation Tax upon their receipts from such sales. 86 Ill. Adm. Code 130.1905 (This is a GIL.)

July 10, 2003

Dear Xxxxx:

This letter is in response to your letter dated April 8, 2003. We are responding to your request with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200>.

In your letter you stated and made inquiry as follows:

AAA manages the Farmers' Market in CITY. This is a producers only market where sellers are required to grow what they sell. A question has arisen regarding the reporting of state sales tax.

I am writing to request a legal ruling on whether or not growers are required to pay state sales tax on what they sell at Farmers' Markets? I have enclosed copies of two pieces of legislature that pertain to selling at Farmers' Markets:

505 ILCS 70/ Farm Products Marketing Act
Title 86, Part 130, Section 130, 1905 Agricultural Producers

The growers of agricultural products selling the products that they grow to purchasers for use or consumption at the Farmers' Market are required to collect and remit Retailers' Occupation Tax to the Illinois Department of Revenue upon their receipts from such sales.

Under the Retailers' Occupation Tax Act (35 ILCS 120/1 et seq.) a "sale at retail" is a "transfer of ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property to the extent not first subjected to a use for which it was purchased, for a valuable consideration...". Retailers' Occupation Tax is imposed on persons engaged in the business of selling at retail tangible personal property. See 35 ILCS 120/2.

Persons who are engaged in the business of selling agricultural products, such as milk and other dairy products, livestock, meats, hay, grain, vegetables, fruit, plants, flowers, eggs, young trees or any other such items of tangible personal property, to purchasers for use or consumption, are

required to collect and remit Retailers' Occupation Tax on such sales. This is notwithstanding the fact that such persons produce themselves the agricultural products which they intend to sell. See 86 Ill. Adm. Code 130.1905, enclosed for your reference.

This includes farmers who sell products to purchasers for use or consumption from roadside stands or who rent or lease space from an established market and sell commodities in their own names to purchasers for use or consumption. Such persons are engaged in the business of selling tangible personal property at retail and are therefore required to collect and remit Retailers' Occupation Tax. See Section 130.1905(a)(3).

In regards to Section 1 of the Farm Products Marketing Act (505 ILCS 70/1), such provision has been determined by the courts not to exclude agricultural producers from the imposition of tax on the business of selling tangible personal property at retail. The Illinois Appeals Court in Pedigo v. Dept. of Revenue affirmed a determination that farmers engaged in the business of selling their produce to consumers for use or consumption are engaged in the business of selling tangible personal property at retail. Therefore, such persons are not exempt from the imposition of tax by virtue of Section 1 of the Farm Products Marketing Act. It is a tax on the business of selling products for use or consumption rather than the sale of products that is at issue. Section 1 of the Act does not exempt producers of agricultural products from a tax on the privilege of engaging in such business. See Pedigo v. Dept. of Revenue, 105 Ill. App. 3d 759 (4th Dist. 1982).

I hope this information has been helpful. The Department of Revenue maintains a Web site, which can be accessed at www.state.il.us. If you have further questions related to the Illinois sales and use tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b). Such regulation may be obtained from our Web site mentioned above at <http://www.revenue.state.il.us/Laws/regs/part1200>.

Sincerely,

Dana Deen Kinion
Associate Counsel

DDK:msk
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